

March 24 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

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Office of Disciplinary Counsel

FILED

MAR 24 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

BEFORE THE COMMISSION ON PRACTICE OF THE
SUPREME COURT OF THE STATE OF MONTANA

IN THE MATTER OF DAL SMILIE,

An Attorney at Law,

Respondent.

)

) Supreme Court Cause No. PR 10-0108

)

) ODC File No. 10-049

)

) **COMPLAINT**

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)

For its complaint, the Office of Disciplinary Counsel for the State of Montana ("ODC"),
alleges:

1. Dal Smilie, hereinafter referred to as Respondent, was admitted to the practice of law in the State of Montana in 1978, at which time he took the oath required for admission, wherein he agreed to abide by the Rules of Professional Conduct, the Disciplinary Rules adopted by the Supreme Court, and the highest standards of honesty, justice and morality, including but not limited to, those outlined in parts 3 and 4 of Chapter 61, Title 37, Montana Code Annotated.

2. The Montana Supreme Court has approved and adopted the Montana Rules of Professional Conduct ("MRPC"), governing the ethical conduct of attorneys licensed to practice in the State of Montana, which Rules were in effect at all times mentioned in this Complaint.

1 3. By Indictment filed August 22, 2008 in the Court of Common Pleas of Fairfield
2 County, Ohio, Respondent was charged with Grand Theft by Deception in violation of §2913.02
3 of the Ohio Revised Code, a felony in the third degree (Count One) and Receiving Stolen
4 Property in violation of §2913.51 of the Ohio Revised Code, a felony in the third degree (Count
5 Two). The case was captioned *The State of Ohio v. Smilie*, Case No. 08-CR-294.

6 4. On February 22, 2010, Respondent pled guilty to the following offenses charged
7 in an Amended Indictment:

8 A. Grand Theft by Deception in violation of §2913.02 of the Ohio Revised
9 Code, a felony in the third degree (Count One); and,

10 B. Receiving Stolen Property in violation of §2913.51 of the Ohio Revised
11 Code, a felony in the fifth degree (Count Two).

12 5. The Court accepted Respondent's plea and proceeded with sentencing.

13 6. Respondent was sentenced to serve a prison term of three years as to count one
14 and eight months as to count two, to be served consecutively. As to count one, the Court, in lieu
15 of prison, ordered 24 months community control with conditions. The Court also assessed a
16 \$1,000 fine and costs of the prosecution.

17 7. By Order filed March 17, 2010, the Montana Supreme Court, pursuant to Rule
18 23B, RLDE (2002), determined that the criminal offenses of which Respondent has been
19 convicted affects the Respondent's ability to practice law, suspended Respondent pending
20 disposition of disciplinary proceedings and directed ODC to file a complaint against Respondent
21 predicated upon his criminal conviction.

22 8. Pursuant to Rule 8A(3), conduct which results in conviction of a criminal offense
23 is a ground for discipline.
24
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9. Pursuant to Rule 8.4(b), MRPC, it is professional misconduct for a lawyer to “commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects[.]”

10. Pursuant to Rule 23C, RLDE (2002), the sole issue to be determined in the formal disciplinary proceedings herein “shall be the extent of the final discipline to be imposed.”

WHEREFORE, the Office of Disciplinary Counsel prays as follows:

1. That a Citation be issued to the Respondent, to which shall be attached a copy of the complaint, requiring Respondent, within twenty (20) days after service thereof, to file a written answer to the complaint;

2. That a formal hearing be had on the allegations of this complaint before an Adjudicatory Panel of the Commission on the sole issue of the extent of the final discipline to be imposed upon the Respondent; provided, however, that the matter not be brought to hearing until all appeals from the conviction are concluded unless the Respondent requests that the matter not be deferred pursuant to Rule 23C, RLDE (2002);

3. That the Adjudicatory Panel of the Commission make a report of its findings and recommendation after a formal hearing to the Montana Supreme Court as to the nature and extent of appropriate discipline, and,

4. For such other and further relief is deemed necessary and proper.

DATED this 23rd day of March, 2010.

Shaun R. Thompson
Disciplinary Counsel

1 Shaun R. Thompson
2 Disciplinary Counsel
3 P.O. Box 1099
4 Helena, Montana 59624-1009
5 (406) 442-1648

6 Office of Disciplinary Counsel

7 BEFORE THE COMMISSION ON PRACTICE OF THE
8 SUPREME COURT OF THE STATE OF MONTANA

9 * * * * *

10 IN THE MATTER OF DAL SMILIE,
11 An Attorney at Law,
12 Respondent.

) Supreme Court Cause No. PR 10-0108
) ODC File No. 10-049
)
) **CITATION TO APPEAR IN ANSWER TO**
) **COMPLAINT OF THE OFFICE OF**
) **DISCIPLINARY COUNSEL**

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14
15 TO: Dal Smilie, Respondent, Greetings:

16 YOU ARE HEREBY NOTIFIED that the Office of Disciplinary Counsel for the State of
17 Montana has filed with the Supreme Court of the State of Montana its Formal Complaint against
18 you pursuant to Rule 12 of the Rules for Lawyer Disciplinary Enforcement (2002), a copy of
19 which Complaint is attached hereto.

20 YOU ARE HEREBY COMMANDED to make and file with the Clerk of this Court your
21 written answer to said Complaint within twenty (20) days from and after service upon you of this
22 Citation and a copy of said Complaint as provided by Rule 18, RLDE (2002).

23 Any procedural motions, for example, a Motion for Extension of Time within which to
24 Answer the Complaint, filed by you or by your Counsel prior to the filing of the Findings,
25 Conclusions, and Recommendations of the Commission on Practice, shall be addressed to and

1 filed with Shauna Ryan, Commission on Practice, P.O. Box 203002, Helena, MT 59620-3002,
2 and served upon the Office of Disciplinary Counsel, P.O. Box 1099, Helena, MT 59624-1099,
3 as provided by Rule 18, RLDE (2002).

4 In the event of your failure to file an answer within the time prescribed, you will be held
5 and deemed in default as provided by Rule 12B(2), RLDE (2002).

6 WITNESS my hand and seal of this Court this _____ day of March, 2010.

7
8
9 (COURT SEAL)

ED SMITH,
Clerk of the Supreme Court
Of the State of Montana